UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,297	09/22/2000	Eric R. Lovegren	R11.12-0701	1706

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EXAMINER
WEST, JEFFREY R

ART UNIT	PAPER NUMBER
2857	

DATE MAILED: 10/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)	
Advisory Action ***Before the Filing of an Appeal Brief***	09/667,297	LOVEGREN ET AL.	
	Examiner	Art Unit	
	Jeffrey R. West	2857	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>19 October 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

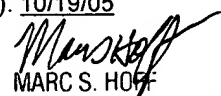   NOTE: *See Continuation Sheet*. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>*17-20 and 24-42*</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). <u>10/19/05</u>

13. ☐ Other: _____.

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It is first noted that the unsigned Information Disclosure Statement filed March, 30, 2005, has now been resubmitted with a signature, and is now considered.

Continuation of 3:
The proposed amendment to claim 17 specifying that the microprocessor receive information related to properties of the materials, proposed amendment to claim 37 specifying that the first threshold value is a function of at least one of an offset value and temperature, and new claims 43-45 specifying that the information related to properties of the materials is received from an operator and/or over a process control loop and that the first threshold is further calculated as a function of a temperature, are considered to be new issues that would require additional search and/or consideration.

The proposed amendments will also not be entered because they would raise issues with respect to 35 U.S.C. 112, second paragraph, due to indefiniteness of claim 35 referring to "the apparatus" without a previous indication as to what is defined as the "apparatus".

The proposed amendments will further not be entered because they would require additional reconsideration and reworking of the outstanding rejection by canceling claims 24, 27, 28, 30, 33, 36, 38 and 40-42.

Continuation of 11:
Applicant first argues that "The present invention is directed to a radar level transmitter in which threshold(s) used to detect levels of materials in a container are calculated by a microprocessor in the level transmitter. This aspect of the present invention as set forth in claim 1[7] and is not shown or suggested by the reference cited in the Office Action."

The Examiner asserts that McEwan discloses a method for use by a microwave level transmitter to detect a (i.e., 200ps = 5 GHz, column 8, lines 40-41) reflected pulse of a transmitted microwave pulse from a first material interface (column 6, lines 16-18), the method comprising detecting the reflected pulse from the first material interface using a estimated first reflected pulse amplitude (i.e. threshold) (column 8, line 66 to column 9, line 3).
McEwan also discloses the apparatus for carrying out the method comprising an antenna coupled to a transceiver (column 6, lines 12-16) that uses the antenna to transmit the microwave pulse and produce a signal representing reflected wave pulses (column 6, lines 22-25), a microprocessor coupled to the transceiver to control the transceiver and process the signal (column 6, lines 57-59 and column 9, lines 45-47) and a level calculation module executable by the microprocessor adapted to establish a level of a first material interface using the signal and the threshold value to be provided to a display through an input/output (column 9, lines 32-47).

Applicant also argues, "independent claim 17 states that the radar level transmitter receives information related to properties of the materials. The references cited by the Examiner do not discuss received such information."
The Examiner asserts that this proposed amendment has not been entered because it requires additional search and/or consideration. The Examiner does note, however, that Innes teaches a probe for sensing a fluid level comprising means for performing time-domain reflectometry (column 3, lines 26-31) by setting a dielectric of a first material and a second material, below the first material, forming a gas/liquid or liquid/liquid interface (column 3, lines 32-52), and using these known dielectric parameters in calculating the detected pulse amplitude to account for pulse amplitude variations (column 3, lines 55-62).